REDACTED FOR PUBLIC INSPECTION

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Connect America Fund	WC Docket No. 10-90

COMMENTS OF MEDIACOM COMMUNICATIONS CORPORATION ON THE FURTHER NOTICE OF PROPOSED RULEMAKING FOR PHASE I INCREMENTAL SUPPORT OF THE CONNECT AMERICA FUND

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January 28, 2013

SUMMARY

The Commission's paramount concern, if there is to be a second round of funding in Phase I, should be to ensure that the Connect America Fund ("CAF") support is used efficiently to bring broadband to relatively low-cost unserved areas and to as many user locations in those areas as possible. This can be accomplished better through an open competitive bidding process rather than through the rapid adoption of new criteria designed to provide further incremental support to price cap local exchange carriers ("LECs") alone. Adopting new rules solely to perpetuate the competitively non-neutral, non-market-based price cap LEC-only funding framework of Phase I would create the distinct likelihood that not all of the money will be used to serve the purposes of Phase I, because either (i) eligible carriers will not accept the money, or (ii) or the carriers will be able to use the money in part to compete with providers that have made private investments in fiber and other broadband facilities. The Commission's and the industry's recent experience in using competitive bidding demonstrate that competitive bidding can be implemented efficiently and conducted successfully to ensure that all of the money is used and that the greatest number of unserved locations will receive broadband as a result.

If the Commission declines to adopt competitive bidding for the distribution of additional Phase I funding, it should limit the next round of Phase I in several ways. Unused first round Phase I funds should be allocated to Phase II, where disbursements can be better targeted and controlled. Any additional round of Phase I should make available no more than $300 million with a prohibition on double-dipping into 2013 "frozen support" funding now available for broadband. Reporting and other requirements must be put into place to ensure that the objectives of the first round of Phase I are fully achieved – bringing broadband service to areas

not yet receiving 768/200 kbps speed service – before Phase I funds can be used to bring service to areas unserved using a 4/1 Mbps criterion that already have slower broadband service available.

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Mediacom Communications Corporation ("Mediacom") respectfully submits these comments in response to the Federal Communications Commission's ("Commission") Further Notice of Proposed Rulemaking ("FNPRM") on potential modifications to the rules governing the award of Connect America Fund ("CAF") Phase I incremental support to price cap local exchange carriers ("LECs").[1] In the 2011 *Connect America Fund Order*,[2] the Commission

1 *See Connect America Fund*, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, FCC 12-138 (rel. Nov. 19, 2012) ("FNPRM"). Mediacom has conducted two rounds of ex parte meetings on the Federal Communications Commission's ("Commission") CAF. *See* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from John J. Heitmann, Counsel to Mediacom, WC Dkts. 10-90, 05-337 (June 13, 2012) ("Mediacom June 2012 Ex Parte"); Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from John J. Heitmann, Counsel to Mediacom, WC Dkts. 10-90, 05-337 (Dec. 20, 2012) ("Mediacom December 2012 Ex Parte"). Mediacom also previously has submitted comments in opposition to Windstream's request for a waiver of CAF Phase I rules. *See* Opposition of Mediacom Telephony to Windstream's Election and Petition for Waiver, WC Dkts. 10-90, 05-337 (Aug. 24, 2012) ("Mediacom Windstream Opposition") and Mediacom Reply Comments on the Windstream Election and Petition for Waiver, WC Dkts. 10-90, 05-337 (Sept. 10, 2012) ("Mediacom Windstream Opposition Reply Comments") . Mediacom also previously has submitted comments in response to the Commission's request for comments relating to the National Broadband Map. *See* Mediacom Communications Corporation Comments, WC Dkt. 10-90 (filed Jan. 9, 2013) ("Mediacom Map Comments"); Mediacom Communications Corporation Reply Comments, WC Dkt. 10-90 (filed Jan. 24, 2013) ("Mediacom Map Reply Comments"). In addition, Mediacom participates in the CAF proceeding though its industry associations, the American Cable Association ("ACA") and the National Cable & Telecommunications Association ("NCTA").

2 *See Connect America Fund et al.*, 26 FCC Rcd 17663 (2011), *pets. for review pending sub nom. In re: FCC 11-161, No. 11-9900* (10th Cir. filed Dec. 18, 2011) ("*Connect America Fund Order*").

established the Phase I incremental support program as a "transitional distribution mechanism"[3] that would provide up to $300 million of additional support to price cap LECs as "an immediate boost to broadband deployment in areas that are unserved by any broadband provider"[4] while the Commission was developing the Phase II support regime.[5] Since the Commission has yet to adopt the Phase II regime, it has proposed to award additional Phase I incremental support in 2013. The FNPRM sets forth a series of proposals by which the Commission may amend the rules for how support would be awarded. Mediacom appreciates this opportunity to provide its views on the Commission's proposals.

INTRODUCTION

The Commission's paramount concern, if there is to be a second round of funding in Phase I, should be to ensure that the CAF support is used efficiently to bring broadband to relatively low-cost unserved areas and to as many user locations in those areas as possible. This can be accomplished better through an open competitive bidding process rather than through the rapid adoption of new criteria designed to provide further incremental support to price cap LECs alone. Adopting new rules solely to perpetuate the competitively non-neutral, non-market-based price cap LEC-only funding framework of Phase I would create the distinct likelihood that not all of the money will be used to serve the purposes of Phase I, because either (i) eligible carriers will not accept the money, or (ii) the carriers will be able to use the money in part to compete with providers that have made private investments in fiber and other broadband facilities. The Commission's and the industry's recent experience in using competitive bidding demonstrate that competitive bidding can be implemented efficiently and conducted successfully to ensure

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3 *Id.*, ¶132.

4 *Id.*, ¶137.

5 *See id.*, ¶132.

that all of the money is used and that the greatest number of unserved locations will receive broadband as a result.

If the Commission declines to adopt competitive bidding for the distribution of additional Phase I funding, it should limit the next round of Phase I in several ways. Unused first round Phase I funds should be allocated to Phase II, where disbursements can be better targeted and controlled. Any additional round of Phase I should make available no more than $300 million with a prohibition on double-dipping into 2013 "frozen support" funding now available for broadband. Reporting and other requirements must be put into place to ensure that the objectives of the first round of Phase I are fully achieved – bringing broadband service to areas not yet receiving 768/200 kbps speed service – before Phase I funds can be used to bring service to areas unserved using a 4/1 Mbps criterion that already have slower broadband service available.

I. ANY NEW CAF PHASE I SUPPORT SHOULD BE ALLOCATED USING COMPETITIVE BIDDING

The broadband ecosystem is changing rapidly. A key premise of the Commission's CAF subsidy framework is now clearly invalid and will result in wasteful and inefficient use of federal universal service subsidies if not addressed. The premise that only price cap LECs should receive CAF Phase I support (and have a right of first refusal for Phase II support) because they have some inherent advantage that will allow them to best leverage CAF funding to provide broadband service in unserved areas has been proven false by the market-based experience with fiber builds to cell towers. Through the recent and ongoing experience of bidding and competing to deploy fiber to wireless carrier cell tower cites across rural America, Mediacom and price cap LECs have learned that the carrier with the nearest extendable fiber plant typically wins the bid and that the presence of other nearby network plant typically is not a factor.

The competitive bidding process provides a result that the Commission's current framework cannot. Without cumbersome mapping or static criteria, competitive bidding for cell tower fiber builds produces the most cost effective and efficient solution to the problem presented by previously unserved locations. The Commission's CAF program is too large and its goals are too important for the Commission to overlook this new reality or to succumb to political overtures to treat the CAF as an entitlement program for price cap LECs. By introducing competitive bidding as the primary means of distributing CAF subsidies, the Commission will be able to capitalize on private investments – not undermine or discourage them – and deliver more broadband for less money.

A. The Commission's Goals for Phase I Should Be to Use Funds Efficiently and In a Manner that Does Not Undermine Private Investments

It is imperative that the goal of using CAF subsidies efficiently should not give way to expediencies or political pressures. The current CAF Phase I framework is not well designed to avoid inefficient funding that undermines or even discourages private investment. The Commission should change this by adopting a flat prohibition on using CAF funding in areas where privately funded fiber that could be quickly extended to provide retail broadband service already has been deployed.

As Mediacom explained in prior filings with the Commission, the Company has firsthand experience with the disincentives for private investment that can result from improperly used and controlled government funding.[6] In 2010, Clearwave Communications, a wholesale customer of Mediacom's broadband services, was granted funding from the federal Broadband

[6] *See, e.g.*, Mediacom Windstream Opposition at 7-8 and Mediacom June 2012 Ex Parte at 2.

Technology Opportunities Program ("BTOP"). Clearwave received more than $42 million ($31.5M from the BTOP and $11.3M in state stimulus funding) in federal and state government broadband stimulus funds for broadband deployment in southern Illinois.[7] Clearwave then utilized these public funds to install middle-mile and last-mile facilities in the same area served by Mediacom, resulting, in some cases, in the duplication of Mediacom's existing, privately-funded broadband facilities.[8] Clearwave, and its underlying customers, then moved off Mediacom's network and onto Clearwave's publicly funded network.[9] Such overbuilding by public grantees is an inefficient use of public funds that devalues and discourages private investments made by unsubsidized competitors like Mediacom.

The National Broadband Map ("NBM"), while useful for determining "unserved" locations, is not designed to show information useful in determining which providers have existing fiber deployed that could be best leveraged – or devalued – with CAF funding. Mediacom's review of the NBM revealed, among other things,[10] many "unserved" areas that also had Mediacom fiber present in the census block or an adjacent one. While not serviceable in a normal installation interval, many of these areas could be served in a manner of a few weeks (*i.e.*, broadband service in excess of 4/1 Mbps within 45 days).

To illustrate this point, Mediacom submits two maps.[11] On these maps, and as discussed in the Declaration of Eric Schoenfeldt, attached hereto as Exhibits 1 and 2, respectively, census blocks categorized by the Commission as unserved are depicted and

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[7] *See id*.

[8] *See id*.

[9] *See* Mediacom June 2012 Ex Parte at 2.

[10] *See generally* Mediacom Map Comments, *passim*, and Mediacom Map Reply Comments, *passim*.

[11] The maps are attached hereto as Exhibit 1. Mediacom has designated the maps as confidential and submits them with a request for confidential treatment.

overlaid with the location of Mediacom's facilities.[12] The census blocks categorized by the Commission as unserved, in price cap territories, are identified as white and all other census blocks, including those categorized as served within price cap territories and served or unserved in non-price cap territories are identified as black.[13] Mediacom's fiber to cell towers is marked in green, other fiber that can be used to provide broadband service to new subscribers is shown in blue and remaining fibers, that are not suitable for extension to provide retail broadband service, are shown in yellow.[14] Circled (in yellow) are those census blocks that are a relatively short distance from the location of Mediacom's fiber that could be extended to provide retail broadband service.[15] These maps illustrate the potential to leverage privately funded fiber builds with CAF money.

In some cases, the leveraging can be done with private money, but certainly not in areas where it would be competing with CAF or other government subsidies. Mediacom offers, as an example, the community of Peosta, Iowa, a rural and previously unserved community of a little over 400 homes for which Mediacom recently was able to leverage one of its more recent cell tower fiber builds to provide privately funded fiber-based broadband service to consumers who had been unserved previously. Carriers, like Mediacom, that have fiber in or adjacent to census blocks that are unserved today often could initiate service in a time frame shorter than recipients of CAF Phase I funding that have not yet laid fiber in, or in close proximity to, those unserved areas. In such areas, CAF phase I funding would undermine existing private investments and deter further extensions of such networks, and thus should not be awarded to price cap LECs.

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[12] Declaration of Eric Schoenfeldt at 1 (Jan. 28, 2013).

[13] *Id*. at 2.

[14] *Id.*

[15] *Id*.

Alternatively, funds should be distributed by competitive bidding which would enable the American public to benefit from the efficiencies, in both time and cost, associated with the competitors that already have installed fiber in or nearby unserved areas and thus can initiate service less expensively and more promptly than the price cap LECs. Such a market-based mechanism would make sure CAF Phase I funds are put to their most efficient use to make broadband service available to as many new areas as possible.

B. Competitive Bidding Is the Best Way to Ensure that a Second Round of Phase I Funding Is Distributed Efficiently and Used Effectively

The FNPRM presents the Commission with an opportunity to prevent unnecessary and wasteful spending resulting from the current CAF support distribution methodology which favors the outdated incumbent LEC-centric service model. If the Commission is going to change its rules, it should do something bold and meaningful rather than guess at solutions to undefined problems with 2012 CAF Phase I. The Commission should seize this opportunity to introduce some market-based discipline that will result in better funding decisions that produce more broadband for less money. Specifically, the Commission should learn from its own and the industry's prior successes in using competitive bidding as the means to ensure broadband is made available to the greatest number of locations at the least cost to the American public.

1. The Commission Has Successfully Used Competitive Bidding for Broadband Fiber Deployments

The Commission's recent experience with the Mobility Fund auction demonstrates that competitive bidding can be a successful mechanism for distributing CAF Phase I support. In a news release announcing the results of the Mobility Fund auction, the Commission spoke glowingly of the auction, describing it as "an innovative, auction-based competition to distribute funding" and noting that "winners were chosen based on the lowest cost-per-mile bids . . .[t]his will maximize the impact of the new funding to speed deployment to the greatest number of unserved areas."[16] The Commission further noted that the auction would enable the deployment of mobile infrastructure in 31 states and, as a result, "83,000 new U.S. road miles on which millions of Americans live, work, or travel will gain access to advanced mobile networks that significantly enhance opportunities for jobs, education, healthcare and public safety."[17] There is no reason to believe that using a competitive bidding mechanism to distribute CAF Phase I funding for broadband deployment would not have similarly beneficial results. Moreover, any concerns that a competitive bidding process would not be successful due to low industry participation have proven unfounded. In the Mobility Auction news release, the Commission pointed out that the winning bidders were not confined to the larger carriers but also included "smaller carriers like Pine Belt Cellular, Inc. in Alabama, and VTel Wireless, Inc. in Vermont."[18] These auction results demonstrate that market-based mechanisms like competitive bidding are an effective means of distributing and ensuring that CAF funds are used to deploy broadband service to the greatest number of areas at the lowest cost to the fund.

2. Industry Has Successfully Used Competitive Bidding for Broadband Fiber Deployments

The explosive growth in consumer use of wireless devices and services has resulted in a concomitant increase in the demand for broadband service. As a result, the industry has undertaken extensive builds of fiber infrastructure to wireless carrier cell towers, creating new broadband superhighways that traverse and touch unserved and underserved areas of rural

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[16] *See* News: FCC Announces Winners of America's First 'Mobility Fund' Auction: Up to 83,000 New U.S. Road Miles on Which Millions of Americans Live, Work, or Travel Will Gain Access to Mobile Internet Within 3 Years (rel. Oct. 3, 2012).

[17] *Id.*

[18] *Id.*

America. These superhighways – whether owned by price cap LECs or cable CLECs – are the backbone upon which CAF-supported broadband infrastructure should be leveraged.

Mobile providers seeking fiber-based backhaul infrastructure from cell towers typically use competitive bidding to ensure that they obtain the facilities they need at the most cost-effective price. Existing cell tower fiber build-outs have been largely privately funded and accomplished through competitive bidding which has resulted in a mix of price cap LEC and cable CLEC fiber builds. Mediacom has participated in these cell tower fiber builds, extending hundreds of route miles of fiber to approximately 1,000 cell towers.[19] Mediacom's experience indicates that it typically is not the party with the nearest network that wins the bid, but rather the party with the nearest *extendable* fiber network wins the bid. Sometimes that party is a price cap LEC and sometimes it is a cable CLEC or other alternative provider, like Mediacom.

Consequently, granting price cap LECs an exclusive CAF funding right or a right of first refusal is not an efficient means of extending broadband availability. Indeed, the Commission already acknowledged the effectiveness of the competitive bidding process when it adopted competitive bidding for the distribution of CAF Phase II support.[20] Recent Commission and industry successes with competitive bidding prove that there is no rational basis for declining to adopt competitive bidding for the distribution of CAF money in a supplemental round of CAF Phase I or for subjecting CAF funding to a price cap LEC right of first refusal in Phase II.

3. Competitive Bidding Is Practical

The Commission can use its recent successful experience in designing the Mobility Fund Phase I auction to quickly design a competitive bidding process to allocate 2013 Phase I incremental support of $300 million, plus the leftover 2012 incremental support of $185

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[19] *See* Mediacom June 2012 Ex Parte, attachment at 11.

[20] *See, e.g.*, *Connect America Fund Order*, ¶¶ 20, 23.

million. The Commission has recognized that the CAF "should ultimately rely on market-based mechanisms, such as competitive bidding, to ensure the most efficient and effective use of public resources."[21] Mediacom agrees with this assessment. Mediacom also recognizes that adoption of its proposal would require adoption of competitive bidding rules which can be done in relatively short order.

To this end, Mediacom supports the competitive bidding process proposed by the ACA.[22] Highlights of that proposal include: providing support to the single recipient that submits the lowest bid to provide broadband service meeting the service criteria in the eligible service area, basing eligible service areas on census blocks, awarding auction support only after ensuring auctions are fully competitive, and not requiring bidders to obtain ETC designation unless and until the provider wins an auction.[23]

An effective competitive bidding process requires as many participating bidders as possible, which leads to potentially innovative solutions and ultimately lower amounts of support necessary to serve a greater number of locations. Establishing a requirement that a bidder apply for and obtain an ETC designation prior to bidding would serve as a formidable and unnecessary barrier to entry and would reduce the number of participating bidders. Therefore, the Commission should not require that companies participating in a Phase I competitive bidding process be designated ETCs as of the time of the auction. A carrier should be able to participate in the competitive bidding process provided it submits information to demonstrate prima facie eligibility for ETC status pursuant to a uniform nationwide standard. If such a carrier wins incremental funding in the auction, then it should be permitted to receive ETC designation

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21 *Id.*, ¶ 165.

22 *See, e.g.*, Comments of the American Cable Association, WC Dkts. 10-90, 05-337 (filed Jan. 18, 2012) ("ACA CAF FNPRM Comments"); Reply Comments of the American Cable Association, WC Dkts. 10-90, 05-337 (filed Feb. 17, 2012) ("ACA CAF FNPRM Reply Comments").

23 *See, e.g.*, *id*.

pursuant to a streamlined process. There is substantial evidence in the record regarding the CAF Phase II competitive bidding process to demonstrate the Commission's ability to assert authority over the ETC designation process under these circumstances.[24]

C. Other Proposed Methods of Distributing Support Lead to Unintended Consequences and Should Be Rejected

The FNPRM seeks comment on a proposal to permit carriers to meet the build-out requirements based on the number of miles of fiber deployed with a minimum number of unserved locations per mile.[25] Specifically, the Commission seeks comment on Windstream's proposal for incremental support of $35,784 per mile and ten unserved locations per mile.[26] Mediacom opposes Windstream's proposal for several reasons. In Mediacom's experience, not all deployments of fiber are created equal mile by mile. Differing obstacles such as rights of way, soil, existing pathways and labor costs affect the costs involved to deploy a mile of fiber. Permitting price cap LECs to use incremental support to deploy fiber at an average cost per fiber mile would likely result in over-subsidization when the carriers use the funds for builds that cost less than the average and forgo the deployment in more challenging environments. Such over-subsidization would create a windfall for price cap LECs and provide them with an unfair advantage in deploying fiber to areas where there is unsubsidized competition, such as from Mediacom.

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24 *See* ACA CAF FNPRM Comments at 21-28 (analyzing both forbearance and preemption options); *see also* Comments of AT&T, WC Dkt. 10-90 et al. at 64-70 (filed Apr. 18, 2011). The process for designating ETCs set forth in Section 214(e) of the Communications Act, which requires states to designate ETCs in most cases, applies to telecommunications services and should not apply to the Commission's distribution of broadband support, which is an information or advanced service. In addition, as stated by ACA, "the existing state ETC designation process is inherently burdensome because it potentially requires that carriers file multiple applications, the Commission does not control the timing of decisions, and states often impose burdensome requirements that could severely affect provider's bids" in auctions. *See* ACA CAF FNPRM Comments at 21.

25 *See* FNPRM, ¶ 18.

26 *See id*., ¶¶ 19-20 (citing Windstream Election and Petition for Waiver, WC Dkts. 10-90, 05-337 at 15 n.38 (July 24, 2012)); *see also* Mediacom Windstream Opposition and Mediacom Windstream Opposition Reply Comments.

Further, the Commission seeks comment on whether it should permit a specified percentage of a fiber route to traverse census blocks where there is an unsubsidized competitor.[27] As an example, Windstream has stated that if its waiver is granted, six percent of its deployed fiber would traverse areas served by a cable provider (likely, Mediacom).[28] Even if the Commission required recipients to certify that they have ranked fiber deployment options by number of unserved locations to be served,[29] the proposal would directly support fiber deployments in areas with an unsubsidized competitor. Such support should be flatly prohibited, as it undermines and chills private investment in fiber deployment. No broadband provider can compete effectively against a government-subsidized competitor, especially in rural areas.

Second mile fiber support proposals should be flatly rejected. Rather than supporting second mile fiber builds that likely would lead to windfall over-subsidization and supporting carriers in areas that are already served by unsubsidized competitors, the Commission could make much more effective and efficient use of additional Phase I funding by adopting a competitive bidding process where carriers would compete for the lowest price to serve locations not already served or serviceable by an unsubsidized competitor. In addition, by distributing additional Phase I support through competitive bidding, the Commission need not consider and adopt an entirely new framework of accountability measures designed to manage the harm that could be done by funding second mile fiber.

II. IN THE ABSENCE OF COMPETITIVE BIDDING, THE COMMISSION SHOULD LIMIT ANY ADDITIONAL PHASE I FUNDING

The Commission released the FNPRM to consider rule changes and alternative uses for CAF Phase I incremental support. As explained above, the most beneficial change the

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27 *See* FNPRM, ¶ 22.

28 *See Ex Parte* Letter of Windstream, WC Dkt. 05-337 at 3 (filed Sept. 27, 2012).

29 *See* FNPRM, ¶ 21.

Commission should adopt is one that rationally and sensibly moves all CAF funding to a competitive bidding model. If the Commission nevertheless declines to embrace such change, it should not rely on the fact that several price cap LECs did not accept the incremental support that was offered them, or at least not all of it, to justify any other changes.[30] Leftover funding, on its own, is not a problem that needs to be remedied and the price cap LECs have not identified a consistent problem with the Phase I incremental funding program or requirements that would necessitate a solution.[31]

The Commission already has stated that it considers the first round of Phase I incremental funding to be a "success."[32] The Commission analyzed the appropriate amount of support per location (*i.e.*, $775) and calculated the amount of support to be offered to each price cap LEC.[33] Some carriers like Frontier Communications and Alaska Communications Systems Group, Inc. accepted all of the offered support.[34] Some carriers like CenturyLink, Windstream and Fairpoint Communications, Inc. ("Fairpoint") accepted some of the offered support and declined the rest.[35] Some carriers like AT&T and Verizon declined all of the offered support.[36]

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30 *See* FNPRM, ¶ 2.

31 A competitive bidding process almost certainly would ensure that all of the CAF Phase I incremental funding is not only distributed, but that it is distributed in the most economically efficient manner possible. In the Mobility Fund Phase I auction, all funds were awarded.

32 *See* FNPRM., ¶ 7.

33 *See Connect America Fund Order*, ¶¶ 134-38; and Wireline Competition Bureau Announces Support Amounts for Connect America Fund Phase One Incremental Support, WC Dkts. 10-90, 05-337, Public Notice, DA 12-639 (rel. Apr. 25, 2012).

34 *See* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Michael Golob, Senior Vice President, Engineering and Technology, Frontier Communications, WC Dkts. 10-90, 05-337 (July 24, 2012); Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Amy Gardner, Vice President, Revenue Assurance, Alaska Communications Systems Group, Inc., WC Dkts. 10-90, 05-337 (July 24, 2012).

35 *See* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Melissa E. Newman, Vice President- Federal Regulatory Affairs, CenturyLink, WC Dkts. 10-90, 05-337 (July 24, 2012); Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Eric N. Einhorn, Senior Vice President, Government Affairs, Windstream Communications, Inc., WC Dkts. 10-90, 05-337 (July 24, 2012); Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Michael T. Skrivan, Vice President Regulatory, FairPoint Communications, Inc. WC Dkts. 10-90, 05-337 (July 23, 2012).

There was no consistent reason given by the declining carriers as to why the offered support was declined. Windstream and Fairpoint filed waiver petitions arguing that the $775 support amount per location was not enough.[37] CenturyLink claimed that identification of census blocks as served or unserved was flawed.[38] AT&T and Verizon have indicated that they likely declined the support because they are transitioning their rural buildout plans from wireline to wireless.[39] Therefore, no particular change in the rules (*e.g.*, increasing the amount of support per location, changing the speed threshold for the "unserved" determination, or supporting second mile fiber) will result in all of the declining price cap LECs accepting the next round of funding. Moreover, getting the price cap LECs to accept the support is not the stated goal of providing Phase I incremental support – the goal is to spur deployment of broadband to unserved locations in lower cost areas.[40] As discussed herein, there are more equitable and efficient ways of meeting that goal.

A. The Onset of Frozen High-Cost Support for Broadband Can Bridge the Gap Between Phase I and Phase II

In 2013, price cap LECs will be required to spend over $750 million[41] in "frozen high-cost support" to "build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor."[42]

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36 *See* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Robert W. Quinn, Jr., Senior Vice President Federal Regulatory and Chief Privacy Officer, AT&T, WC Dkts. 10-90, 05-337 (July 24, 2012); Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Kathleen Grillo, Senior Vice President Federal Regulatory Affairs, Verizon, WC Dkts. 10-90, 05-337 (July 24, 2012).

37 *See* Windstream Communications, Inc. Petition for Waiver, WC Dkts. 10-90, 05-337 (filed July 24, 2012) and Fairpoint Communications, Inc. Petition for Waiver, WC Dkts. 10-90, 05-337 (filed Sept. 10, 2012).

38 *See* CenturyLink Petition for Waiver, WC Docket No. 10-90 et al. (filed June 26, 2012).

39 *See* AT&T Presentation: Laying a Foundation for Future Growth, November 7, 2012 at 41-42; Statement of Verizon's CEO, Lowell McAdam at the Guggenheim Securities Symposium (June 21, 2012), available at http://www.media-alliance.org/downloads/Verizon_Kill_Copper.pdf.

40 *Connect America Fund Order*, ¶ 139.

41 *See* http://www.usac.org/_res/documents/hc/pdf/fcc/Frozen-High-Cost-Support-DA-12-298.pdf.

42 *Connect America Fund Order*, ¶ 150.

This is important for two reasons. First, 2013 will see an enormous influx in immediate support for broadband builds by price cap LECs. Thus, given the interim nature and limited scope of CAF Phase I, the Commission could rationally decide to forego any further Phase I funding and instead simply move to Phase II when it is ready to be launched. Mediacom supports such an outcome.

Second, if the Commission proceeds with a second round of CAF Phase I funding, it must address how such funding is to be used separate and apart from frozen support funding for broadband. Critically, the Commission should not allow price cap LECs to "double dip" by using frozen high-cost support and incremental support for the same broadband deployment. The Commission should adopt stringent accountability and oversight requirements to guard against such double-dipping.

B. Absent Competitive Bidding, Mediacom Supports Deferring Further CAF Funding to Phase II

One alternative approach raised by the Commission is to "apply any funding remaining from Phase I to [the] overall budget for Connect America Phase II."[43] As indicated above, the most sensible thing for the Commission to do, in the absence of competitive bidding, is to end Phase I and to return unclaimed funds. A less preferable alternative would be to allocate remaining 2012 Phase I funds to Phase II. Although CAF Phase II contains the anti-competitive right of first refusal for price cap LECs, the potential for competitive bidding to serve many unserved areas means that funds disbursed as part of the Phase II process will be more efficiently and effectively allocated than under the current Phase I incremental support process. Phase II is likely to begin in less than a year and carriers will be required to use one-third or more of their frozen high-cost support for broadband deployments this year. Therefore,

[43] FNPRM, ¶41.

returning or reallocating unclaimed Phase I funding to CAF Phase II will not likely result in any noticeable dearth in broadband support or deployment.

C. In a Second Round of Phase I Funding, the Commission Should Require Incremental Support Recipients to Serve 768/200 kbps Locations First

Under the Commission's current rules, locations are eligible for support if they are not served with fixed terrestrial broadband at speeds of at least 768 kbps down and 200 kbps up.[44] In the FNPRM, the Commission proposes to increase the minimum speed to 4/1 Mbps, which will effectively increase the number of locations that are considered unserved and therefore eligible for support.[45] As the ACA submits in its comments, this change may be necessary to provide some price cap LECs with sufficient numbers of unserved locations which could be served, on average, for no more than $775 per location.[46] If this is so, Mediacom does not oppose a change to the unserved standard to 4/1 Mbps. However, the change should not come at the expense of locations that do not have broadband speeds of 768/200 kbps. Therefore, incremental support recipients should be required to serve the locations not receiving 768/200 kbps broadband service before expanding to locations that are not served with 4/1 Mbps broadband service. Without this condition, the Commission would stray too far from the purpose of Phase I which is to "bring high-speed Internet access to consumers who lacked any broadband access at all."[47]

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[44] *See id.*, ¶ 10.

[45] *See id.*, ¶¶ 11-12.

[46] *See* Comments of the American Cable Association, WC Dkt. 10-90 (filed Jan. 28, 2013). Mediacom opposes increasing the amount of Phase I support above the $775 per location level.

[47] *See* FNPRM, ¶ 10.

D. The Commission Should Improve Accountability Requirements for Phase I Incremental Support

The Commission should adopt more stringent reporting requirements for any additional Phase I disbursements. Price cap LECs are subject to a number of reporting and certification requirements that accompany acceptance of Phase I incremental support.[48] When carriers accept support, they are required to identify, by census block and wire center, where they intend to deploy broadband.[49] However, as the Commission recognizes, those acceptance filings "do not bind the carriers to deploy only to those areas, or to every location in those areas."[50] In the Phase I Clarification Order, the Commission required only that carriers "make a good faith effort to identify where they will deploy when they file their notices of acceptance."[51] Further, the Commission clarified that carriers may deploy to locations other than the locations identified in the initial acceptance filing.[52] These requirements are insufficient to produce the level of accountability and oversight that should come with a program the size of the CAF.

The modest improvements in accountability measures proposed by the Commission in the FNPRM are also inadequate. Mediacom supports the Commission's proposal to require incremental support recipients to provide, as part of its milestone certifications, geocoded latitude and longitude location information (with census block and wire center information) for each location that the carrier counts toward its deployment requirement.,[53] However, Mediacom favors a *mandatory* requirement that a funding recipient file an update of previous deployment plans, if it intends to deploy to areas other than those initially identified,

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48 *See* 47 C.F.R. §§ 54.312(b)(3), 54.313(b).

49 *See* 47 C.F.R. § 54.312(b)(3).

50 *See* FNPRM, ¶ 46.

51 *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 12-1155, ¶ 5 (July 18, 2012).

52 *See id.*, ¶ 7.

53 *See* FNPRM, ¶ 47.

rather than the optional reporting proposed by the Commission.[54] The incremental support recipients should not be permitted to change their deployments without Commission oversight.

In addition, Mediacom supports the adoption of the additional accountability standards proposed by the ACA, which would represent a significant improvement. Mediacom supports the ACA's proposal to require that incremental support recipients also provide, at a minimum, the specific locations where the incremental support recipient offers or does not offer 768/200 kbps (and potentially 4/1 Mbps) broadband, the specific locations where the recipient will use support to deploy broadband to serve served and unserved locations and locations where broadband will be deployed under merger conditions.[55] The National Cable & Telecommunications Association similarly has taken the position that carriers should publicly disclose the locations where they plan to use incremental support and where unserved subscribers are located.[56] This information will allow the Commission to better track deployments and confirm that support is used only to deploy to unserved locations.

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54 *Id.*

55 *See* Ex Parte Letter of the American Cable Association, WC Docket Nos. 10-90 and 05-337 (filed Oct. 24, 2012).

56 *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Opposition of the National Cable & Telecommunications Association to Windstream's Petition for Waiver of Certain High-Cost Universal Service Rules, at 5 (filed Aug. 24, 2012).

CONCLUSION

For all of the foregoing reasons, Mediacom respectfully requests that the Commission proceed in a manner consistent with the comments set forth herein.

Respectfully submitted,

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January 28, 2013

REDACTED

EXHIBIT 1

Mediacom Maps

REDACTED

REDACTED

EXHIBIT 2

Declaration of Eric Schoenfeldt

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DECLARATION OF ERIC SCHOENFELDT

1. My name is Eric Schoenfeldt and I am over eighteen years old. I am the Supervisor, Voice Operations of Mediacom. ("Mediacom") My address is 100 Crystal Run Road, Middletown, NY 10941. I have been employed with Mediacom since 2010.

2. I am providing this Declaration in support of Mediacom's Comments on the Further Notice of Proposed Rulemaking for Phase I Incremental Support of the Connect America Fund ("CAF Comments"). I have personal knowledge of Mediacom's review and analysis of data provided by the Federal Communications Commission's ("Commission") in conjunction with the Commission's review of areas shown as unserved on the National Broadband Map ("Map") for Connect America Phase I incremental support.

3. I reviewed the Commission's files containing lists of areas identified as unserved on the Map as of December 2011 to identify areas that Mediacom serves or could serve within a short period of time. I reviewed the files and used a mapping software to create maps, for portions of the state of Iowa, identifying the areas labeled by the Commission as unserved.

4. I then edited the maps to identify the census blocks served by Mediacom and the approximate location of Mediacom's cable facilities. Specifically, the maps identify Mediacom's cable footprint including the location of Mediacom's existing fiber and cell tower fiber. Iowa is only one of the twenty-two (22) states within which Mediacom provides telephony services.

5. My analysis revealed areas that are identified by the Commission as unserved but that are close to Mediacom fiber which can be used to provide broadband service. The maps submitted as Exhibit 1 to Mediacom's CAF Comments identify some of the locations where Mediacom, because of the availability of fiber already laid, would be able to provide broadband service in excess of 4/1 Mbps within forty-five (45) days. Census blocks categorized by the Commission as unserved, in price cap territories, are identified on the maps in Exhibit 1 as white and all other census blocks, including those categorized as served within price cap territories and served or unserved in non-price cap territories are identified as black. Mediacom's fiber to cell towers is marked in green, fiber that can be used to provide broadband service to new subscribers is highlighted in blue and remaining fibers, that are not suitable for providing service, are shown in yellow. I then circled (in yellow) those census blocks that are a relatively short distance from the location of Mediacom's fiber capable of providing broadband service.

I declare the foregoing is true to the best of my knowledge.

Mediacom Communications Corporation

By: ______________________

Eric Schoenfeldt

Supervisor, Voice Operations

Dated: January 28, 2013